

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Periodic Reporting Rules

Docket No. RM2018-2

PUBLIC REPRESENTATIVE COMMENTS ON NOTICE OF PROPOSED
RULEMAKING TO REVISE PERIODIC REPORTING REQUIREMENTS

(August 17, 2018)

I. INTRODUCTION

On July 12, 2018, the Commission issued a Notice of Proposed Rulemaking (NPR) to revise the periodic reporting rules codified in 39 C.F.R. part 3050.¹

The Commission proposes to add five new reporting items (proposed § 3050.21(f)(6), (j) through (m)) that the Postal Service must file with its Annual Compliance Report (ACR) provided pursuant to 39 U.S.C. § 3652. Codifying clear reporting requirements for information that the Commission anticipates needing in every Annual Compliance Review streamlines the conduct of the proceeding. In recent Annual Compliance Reviews, two or three CHIRs issued each week, typically with a response deadline of 7 days. Giving the Postal Service advance notice that certain information is required would give the Postal Service more lead-time to develop this information and allocate its resources. It would also better enable members of the public to review this information before the comment deadline. The Public Representative supports the Commission's pursuit of these outcomes. The Public Representative suggests that the proposed rules can be improved by using terminology that is more clear, consistent, and precise.

¹ Notice of Proposed Rulemaking to Revise the Periodic Reporting Requirements, July 12, 2018 (Order No. 4706).

The Commission also proposes to extend certain filing deadlines, change the form and content of two tables, and eliminate a duplicative filing requirement. The Public Representative discussed these proposals in a prior filing in this proceeding.² The Public Representative's position is unchanged. These comments notify the Commission that the proposed regulatory text appearing in Table 1 of proposed § 3050.28(b)(1) does not match the description appearing in the preamble to the NPR.

The Public Representative's suggested edits to the proposed rules appear in Attachment A.

II. ISSUE AREAS

A. Data Required by Proposed § 3050.21(j) and (k)

Proposed § 3050.21(j) and (k) contain new reporting requirements for market dominant and competitive products. The Public Representative suggests rewording and reorganizing these proposed rules to set forth clear, consistent, and precise parameters for the required information.

First, the use of the phrase "including negotiated service agreements" in proposed paragraph (k) is unnecessary. Moreover, the appearance of this phrase in proposed paragraph (k), but not in proposed paragraph (j), is inconsistent. Proposed paragraphs (j) and (k) apply for *all* market dominant and competitive products. Several of the existing reporting requirements state the applicability at the paragraph level and nest multiple data items in subparagraphs. For instance, existing paragraph (h) requires the provision of data items (1) through (3) for market tests of experimental products. In order to make applicability of both proposed new reporting requirements unambiguous and consistent with the text and structure of the reporting requirements appearing in existing § 3050.21, the Public Representative suggests edits to specify the

² Public Representative Comments on Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, March 7, 2018.

applicability at the paragraph level (“For all market dominant and competitive products:”) and to nest the data requirements at the subparagraph level.

Second, the phrase “a distribution breakdown of mail fees” used in proposed § 3050.21(j) is imprecise and too narrow. It would be optimal to precisely state in the rule what information is required (e.g., fee revenues by product). In addition, the use of the word “mail” excludes data associated with services (such as Ancillary Services and International Ancillary Services). The Public Representative suggests specifying that “a distribution breakdown of fee revenues” is required.

B. Data from the Preceding Five Fiscal Years in Proposed § 3050.21(m)

Proposed § 3050.21(m) requires the reporting of data for “the preceding five fiscal years.” While the Public Representative does not object to collecting data from prior fiscal years, which may be relevant to determining the nature and extent of the remedy, the Public Representative suggests edits to the proposed rule that would more precisely describe the data required.

First, the fiscal years for which reporting would be required by proposed paragraph (m) are unclear and inconsistent with the existing reporting requirements appearing in § 3050.21. By way of explanation, existing paragraph (a) requires the provision of information for “such year” under review for the items in existing paragraphs (b) through (j). The reference point for all data required by existing paragraphs (b) through (j) is the fiscal year being evaluated for compliance, not the fiscal year in which the ACR is due to be filed. For example, the next ACR, which will evaluate FY 2018, is due to be filed during FY 2019 (December 31, 2018). Accordingly, all data required by existing paragraphs (b) through (j) uses FY 2018 as its reference point, not FY 2019.

The revisions proposed in the NPR do not alter this approach. No reference point is provided to apply “the preceding five fiscal years” requirement appearing in proposed paragraph (m). Using the existing reference point would require the reporting of data for the five fiscal years preceding the fiscal year under review. The Public Representative does not believe that proposed paragraph (m) intended to require the

next ACR to report data for only the five fiscal years preceding the fiscal year under review (FY 2013, 2014, 2015, 2016, and 2017) and omit the fiscal year under review (FY 2018). Instead, the Public Representative believes that proposed paragraph (m) intended to use a different reference point and require the provision of data for the five fiscal years preceding the fiscal year in which the ACR is filed. For example, the Public Representative believes that proposed paragraph (m) intended to require that the next ACR would include data for fiscal years 2014, 2015, 2016, 2017, and 2018 (the five fiscal years preceding the filing of the next ACR, which will occur during FY 2019). Therefore, the Public Representative suggests edits to specify the inclusion of the fiscal year subject to review and the precise prior fiscal years at issue.

Second, it is unclear if proposed paragraph (m) requires the Postal Service to report data for *each* of the preceding five fiscal years or for five fiscal years combined. The Commission should resolve this ambiguity. To enable trend analysis, the Public Representative suggests requiring the provision of data for *each* fiscal year. Accordingly, the Public Representative suggests rewording the proposed rule to require the provision of data “for the fiscal year subject to review and each of the preceding four fiscal years.”

C. Clarifying Edits to Tables 1 and 2 to proposed § 3050.28(b)(1)

The Public Representative notifies the Commission that the description of the changes appearing in the preamble to the NPR does not match the proposed regulatory text of Table 1 to proposed § 3050.28(b)(1). Specifically, the proposed new “Total Revenue” input row discussed in the preamble does not appear in the proposed regulatory text of Table 1 to proposed § 3050.28(b)(1). *Compare* Order No. 4706 at 11 *with id.* at 23. Because the description of the changes appearing in the preamble to the NPR does not discuss the replacement of “Other Expenses” with “Other Services” under the “Operating Expenses” category appearing in the proposed regulatory text of Table 1, the Public Representative interprets the change to be non-substantive and does not object. Because of the difficulty in detecting edits marked using underlines and

strikethroughs to a table, Attachment A instead shades suggested edits to the proposed regulatory text of Tables 1 and 2 to proposed § 3050.28(b)(1) in the following manner: deletions of cells in red, additions of cells in blue, and edits to proposed cells in orange.

III. SUGGESTED LINE-BY-LINE EDITS TO THE PROPOSED RULES

Proposed amendatory instruction 1. The Public Representative suggests clarifying edits in conformance with the edits described herein.

Proposed § 3050.21(a). In conformance with the reorganizational edits described herein, the Public Representative suggests to replace “(n)” with “(m).”

Existing § 3050.21(f)(4). Because the NPR adds proposed subparagraph (6), the Public Representative suggests striking the word “and” at the end of existing subparagraph (4) to reflect that paragraph (f) would now have six required items instead of five. This change would not require a new notice because it is not a substantive change.

Existing § 3050.21(f)(5). Because the NPR adds proposed subparagraph (6), the Public Representative suggests adding “; and” at the end of existing subparagraph (5) to reflect that paragraph (f) would now have six required items instead of five. This change would not require a new notice because it is not a substantive change.

Proposed § 3050.21(f)(6). Because the existing rules hyphenate the word “non-compensatory” (see existing § 3050.21(c)), the Public Representative suggests replacing “noncompensatory” with “non-compensatory.”

Proposed § 3050.21(j) and (k). The Public Representative suggests reorganizational edits to these paragraphs that would specify the applicability in paragraph (j) and nest the data required in subparagraphs (1) and (2). The Public Representative suggests that the phrase “[f]or all market dominant and competitive products:” would be sufficient to encompass negotiated service agreements.

The Public Representative suggests redesignating the text of proposed paragraph (j) as subparagraph (1), with clarifying edits to specify that the required data concerns “fee revenues.” The Public Representative suggests redesignating the text of

proposed paragraph (k) as subparagraph (2) with clarifying edits to require the Postal Service to “identify” rather than to “provide” the amount of any forfeited revenue. These suggested edits would result in the redesignation of the proposed paragraphs (l) through (n) as paragraphs (k) through (m).

Proposed § 3050.21(l). In conformance with the edits described above, the Public Representative suggests redesignating this material as paragraph (k).

Proposed § 3050.21(m). In conformance with the edits described above, the Public Representative suggests redesignating this material as paragraph (l). To improve clarity and precision, the Public Representative suggests requiring the provision of data “for the fiscal year subject to review and each of the preceding four fiscal years.”

Proposed § 3050.21(n). In conformance with the edits described above, the Public Representative suggests redesignating this material as paragraph (m).

Proposed amendatory instruction 4. The Public Representative suggests a clarifying edit to reflect the intention to revise only the introductory text of existing paragraph (b) in § 3050.28 rather than to revise the entirety of paragraph (b).

Table 1 of proposed § 3050.28(b)(1). The Public Representative suggests adding the proposed new “Total Revenue” input row as discussed in the preamble to Order No. 4706. The Public Representative suggests deleting a duplicative heading row.

Table 2 of proposed § 3050.28(b)(1). The Public Representative suggests removing the stray underline of the word “Total” in the final row and clarifying edits to make the text of the heading row consistent with Table 1.

IV. CONCLUSION

For the reasons explained above, the Public Representative supports efforts to promulgate rules that streamline the conduct of the Annual Compliance Review and promote the ability of the public to provide meaningful comments in that proceeding. The edits suggested in these comments would facilitate the achievement of these goals.

Respectfully submitted,

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List of Subjects in 39 CFR Part 3050

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend Chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3050—PERIODIC REPORTING

1. The authority citation for part 3050 continues to read as follows:

Authority: 39 U.S.C. 503, 3651, 3652, 3653.

2. Amend § 3050.21 by revising paragraph (a), revising paragraphs (f)(4) and (f)(5). adding paragraph (f)(6), revising paragraph (j), and adding paragraphs (k), (l), and (m), ~~and (n)~~ to read as follows:

§ 3050.21 Content of the Postal Service's section 3652 report.

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its costs, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code. The report shall provide the items in paragraphs (b) through ~~(n)~~(m) of this section.

* * * * *

(f) * * *

(4) Analyze the contribution of the agreement to institutional costs for its most recent year of operation. The year analyzed shall end on the anniversary of the negotiated service agreement that falls within the fiscal year covered by the Postal Service's annual periodic reports to the Commission and include the 12 preceding months. The analysis shall show all calculations and fully identify all inputs. Inputs used to estimate the effect on total contribution to the Postal Service, such as unit costs and price elasticities, shall be updated using fiscal year values; ~~and~~

(5) Analyze the effect of the negotiated service agreement (and other functionally equivalent negotiated service agreements) on the marketplace. If there were harmful effects, explain why those effects were not unreasonable; ~~and~~.

(6) Provide financial or other supporting documentation that demonstrates that non-~~compensatory~~ market dominant negotiated service agreements improve the net financial position of the Postal Service over default rates or enhance the performance of mail preparation, processing, transportation, or other functions.

* * * * *

(j) For ~~all~~ market dominant and competitive products; ~~;~~

~~(1) provide~~ Provide a distribution breakdown of ~~mail fees-fee revenues~~, including all underlying calculations and source workpapers; ~~and~~

~~(k)(2) For market dominant and competitive products, including negotiated service agreements, provide~~ Provide any third-party service performance results upon which any financial penalty or bonus is determined, and identify the amount of any forfeited revenue; ~~;~~

~~(j)~~(k) Provide all total workhour data and data sources showing workhour measurements by Labor Distribution Code;

~~(m)~~(l) For the Inbound Letter Post product, provide revenue, volume, attributable cost, and contribution data by Universal Postal Union country group and by shape for the fiscal year subject to review and each of the preceding ~~five~~ four fiscal years; and

~~(n)~~(m) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service's compliance with the applicable provisions of title 39 of the United States Code.

3. Amend § 3050.25 by revising paragraphs (c), (d), and (e) to read as follows:

§ 3050.25 Volume and revenue data.

* * * * *

(c) Revenue, pieces, and weight by rate category and special service by quarter, within 40 days of the close of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4, but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b);

(d) Quarterly Statistics Report, including estimates by shape, weight, and indicia, within 40 days of the close of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4 but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b); and

(e) Billing determinants within 60 days of the close of Quarters 1, 2, and 3 of the fiscal year and 90 days after Quarter 4.

4. Amend § 3050.28 by revising paragraph (b) introductory text, tables 1 and 2 to paragraph (b)(1), and paragraph (c) to read as follows:

§ 3050.28 Monthly and pay period reports.

* * * * *

(b) Monthly Summary Financial Report on the 24th day of the following month, except that the reports for the last months of Quarters 1, 2, and 3 of the fiscal year shall be provided at the time that the Form 10-Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10-K report is provided;

(1) * * *

Table 1 – USPS Monthly Financial Statement

Month, Fiscal Year

[\$ millions]

[illegible]

Income										
Interest Income										
Interest Expense										
Total Net Income										
Other Operating Statistics										
Mail Volume (Millions)										
Total Market Dominant Volumes										
Total Competitive Product Volumes										
Total Mail Volumes										
Total Workhours (Millions)										
Total Career Employees										
Total Non-Career Employees										

Table 2 – Mail Volume and Mail Revenue
Month, Fiscal Year
[Thousands]

	Current Period			Year-to-Date		
	Actual	SPLY	% SPLY Var	Actual	SPLY	% SPLY Var
Market Dominant Products:.....						
First Class:						
Volume.....						
Revenue.....						
Periodicals:						
Volume.....						
Revenue.....						
USPS Marketing Mail:						
Volume.....						
Revenue.....						
Package Services:						
Volume.....						
Revenue.....						
All Other Market Dominant Mail:						
Volume.....						
Revenue.....						

Total Market Dominant Products:						
Volume.....						
Revenue.....						
Total Competitive Products						
Volume.....						
Revenue.....						
Total Operating Revenue:						
Total Volume.....						

* * * * *

(c) National Consolidated Trial Balances and the Revenue and Expense

Summary on the 24th day of the following month, except that the reports for the last month of Quarters 1, 2, and 3 of the fiscal year shall be provided at the time that the Form 10-Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10-K report is provided;

* * * * *

5. Amend § 3050.60 by revising paragraph (c) to read as follows:

§ 3050.60 Miscellaneous reports and documents.

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(c) The items listed in paragraph (b) of this section in electronic form;

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